116 U.S. 541.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 921.

THE CHICAGO TYRE AND SPRING WORKS COMPANY, PLAINTIFF IN ERROR,

vs.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED AUGUST 28, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Thursday, the thirty-first day of January, 1884, in the December term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and eighth year.

WM. H. BRADLEY, *Clerk.*

Assumpsit.

THE CHICAGO TYRE AND SPRING WORKS COMPANY
vs.
JESSE SPALDING, Collector of Customs Port and District of Chicago. } No. 18,195.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the second day of December, 1882, came the plaintiff, by its attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its præcipe for a writ of summons, and also at the same time filed its bond for costs in said entitled cause, which said præcipe and bond are, respectively, in the words and figures following, to wit:

2 *Præcipe.*

In the U. S. Circuit Court, Northern Dist. of Illinois. To the December Term, 1882.

UNITED STATES OF AMERICA, *Northern Dist. of Illinois,* } *ss:*

Assumpsit. $500.

THE CHICAGO TYRE AND SPRING WORKS CO., Plaintiff,
vs.
JESSE SPALDING, Collector of Customs Port & Dist. of Chicago, Defendant.

The clerk will please issue a summons to the defendant in the above entitled cause, in a plea of trespass on the case, on promises to the damage of said plaintiff in the sum of five hundred dollars. Direct the same to the marshal of the said district to execute, and make it returnable to the December term of said court, A. D. 1882.

Chicago, December 2, 1882.

STORCK & SHUMAN,
Plff's Attorneys.

Endorsed: Filed Dec. 2, 1882. W. H. Bradley, clerk.

Bond for Costs.

Circuit Court. December Term, A. D. 1882.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

3 THE CHICAGO TYRE & SPRING WORKS CO.
vs.
JESSE SPALDING, Collector.

In Assumpsit. $500.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and, in default of payment by the pl'ff of any costs ordered or adjudged to be paid by it, we hereby agree and stipulate that execution may issue against our property for any costs taxed against pl'ff.

Dated this second day of December, A. D. 1882.

STORCK & SHUMAN.

Endorsed: Filed Dec. 2, A. D. 1882. W. H. Bradley, clerk.

On the same day, to wit, on the second day of December, 1882, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

The United States of America to the marshal of the northern district of Illinois, Greeting:

4 We command you to summon Jesse Spalding, collector of customs, port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December instant, to answer unto Chicago Tyre and Spring Works Company of a plea of trespass on the case upon promises to its damage, as it is alleged, of five hundred dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this second day of December, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the 107th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ by reading the same to the within-

named Jesse Spalding, collector of port of Chicago, and by delivering him a copy of this writ on the 4th of December, 1882.

A. M. JONES,
U. S. Marshal,
By R. D. SHERMAN, *D'p't.*

Endorsed: Filed Dec. 6th, A. D. 1882. W. H. Bradley, clerk.

5 Afterwards, to wit, on the twelfth day of December, 1882, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

In the Circuit Court of the United States for the Northern District of Illinois.

THE CHICAGO TYRE AND SPRING WORKS
vs.
JESSE SPALDING, Coll'r, &c. } Case.

Please enter my appearance as attorney for the def't in the above-entitled cause.

JOSEPH B. LEAKE,
U. S. Attorney.

To Wm. H. Bradley, Esq., clerk, etc.

Endorsed: Filed Dec. 12, 1882. Wm. H. Bradley, clerk.

Afterwards, to wit, on the eighth day of May, 1883, came the plaintiff, by its attorneys, and filed in said clerk's office its declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

In the United States Circuit Court for the Northern District of Illinois. To the June Term, 1883.

6 UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

Chicago Tyre and Spring Works Company, a corporation organized, existing, and doing business under the laws of the State of Illinois, plaintiff in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiff to have been illegally exacted of it and by it paid under protest), by Storck and Shuman, its attorneys, complain of Jesse Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises:

For that whereas the said plaintiff heretofore, to wit, on the third day of May, in the year of our Lord one thousand eight hundred and eighty-two, at, to wit, the northern district of Illinois, made pay-

ment to the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of one hundred and sixty-two dollars and seventy-five cents, lawful money of the United States, as duties, under protest, and in order to obtain possession of certain merchandise imported into the United States for it, the said plaintiff entered for consumption at the custom-house at the port of Chicago,
7 in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified so paid to the said defendant, as aforesaid, as duties, as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by the proper officers of the customs, it, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant as collector, setting forth therein, distinctly and specifically, the grounds of its, the said plaintiff's, objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the said plaintiff appealed to the Secretary of the Treasury of the United States.

And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of one hundred
8 and sixty-two dollars and seventy-five cents, lawful money as aforesaid, so illegally demanded of, and under protest, paid by the said plaintiff as aforesaid, and being so liable the said defendant afterwards, to wit, on the day and year, and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff, well and truly, to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said plaintiff, on the first day of July, 1882, at the port and district aforesaid, paid a certain other large sum of money, to wit, the sum of ninety-three dollars and forty-five cents, like lawful money of the United States, as duties under protest, and in order to obtain possession of certain other merchandise imported into the United States for it, the said plaintiff entered for consumption at the custom-house, at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was, by the said defendant collector,

illegally demanded and exacted of and from the said plaintiff.

9 And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by the proper officers of the customs, it, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant as collector, setting forth therein, distinctly and specifically, the grounds of its, the said plaintiff's, objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the said plaintiff appealed to the Secretary of the Treasury of the United States.

And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of ninety-three dollars and forty-five cents, lawful money as aforesaid, so illegally demanded of and, under protest, paid by the said plaintiff as aforesaid, and being so liable, the said defendant afterwards, to wit, on the day and year, and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff, well and truly to pay to the said plaintiff the said sum of money when

10 he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said plaintiff on a certain other date, to wit, the thirtieth day of July, 1882, at the port and district aforesaid, paid a certain other large sum of money, to wit, the sum of thirty-eight dollars and ten cents, like lawful money of the United States, as duties, under protest, and in order to obtain possession of certain other merchandise imported into the United States for it, the said plaintiff, entered for consumption at the custom house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by the proper officers of the customs, it, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the grounds of its, the said plantiff, ob-

11 jection thereto, and that within thirty days after the date of the said ascertainment and liquidation, as aforesaid, the said plaintiff appealed to the Secretary of the Treasury of the United States.

And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof, and by force of the statutes of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of thirty-eight dollars and ten cents, lawful money, as aforesaid, so illegally demanded of, and, under protest, paid by the said plaintiff as aforesaid, and being so liable the said defendant afterwards, to wit, on the day and year, and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of five hundred dollars, like lawful money as aforesaid, for money by the said
12 defendant, before that time, had and received to and for the use of the said plaintiff, and being so indebted the said defendant afterwards, to wit, on the day and year, and at the district last aforesaid, in consideration thereof undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.,) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of five hundred dollars; and, therefore, the said plaintiff brings its suit, &c.

STORCK & SHUMAN,
Plaintiff's Attorneys.

Endorsed: Filed this eighth day of May, A. D. 1883. W. H. Bradley, clerk.

13 Afterwards, to wit, on the twenty-second day of May, 1883, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States of America for the Northern District of Illinois. May Term, 1883.

JESSE SPALDING, Collector, etc.,
ats.
THE CHICAGO TYRE & SPRING WORKS COMPANY.

Assumpsit.

And the said Jesse Spalding, defendant, by Joseph B. Leake

(United States attorney for this district), his attorney, comes and defends the wrong and injury, when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him, and of this he puts himself upon the country, etc.

JOSEPH B. LEAKE,
U. S. Attorney for Defendant.

Endorsed: Filed May 22nd, 1883. W. H. Bradley, clerk.

14 Afterwards, to wit, on the sixth day of November, 1883, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

U. S. Circuit Court, N. Dist. Ills.

THE CHICAGO TYRE AND SPRING WORKS CO.
vs.
JESSE SPALDING, Collector.

It is hereby agreed that this cause shall be tried by the court without a jury.

STORCK & SHUMAN.
JOS. B. LEAKE,
U. S. Att'y for Defendant.

Chicago, Nov. 6, '83.

Endorsed: Filed Nov. 6, 1883. Wm. H. Bradley, clerk.

On the same day, to wit, on the sixth day of November, in the adjourned October term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE CHICAGO TYRE SPRING WORKS CO.
vs.
JESSE SPALDING, Collector, &c.

Assumpsit.

15 Now come the parties, by their attorneys, and upon issue joined herein by agreement of the parties as per stipulation filed they waive the intervention of a jury and put themselves upon the court, and after hearing the evidence and the arguments of counsel the court takes the same under advisement.

Afterwards, to wit, on the thirty-first day of January, 1884, there was filed in said clerk's office the opinion of Judge Blodgett in said entitled cause, which said opinion is in the words and figures following, to wit:

Opinion.

CHICAGO TYRE & SPRING WORKS COMPANY
vs.
JESSE SPALDING, Collector.

BLODGETT, *J.:*

This is a suit to recover duties claimed by the plaintiffs to have been illegally charged upon certain steel-tire blooms imported by plaintiff.

The inspector of customs classed these blooms under the paragraph of Schedule E, section 2504, which reads as follows:

"All manufactures of steel, or of which steel shall be a component part, not otherwise provided for, 45 per centum ad valorem. But all articles of steel partially manufactured, or of which steel shall be a component, not otherwise provided for, shall pay the same rate of duty as if wholly manufactured." The plaintiff insists that they should have been classed under another paragraph of Schedule E as "steel in any form, not otherwise provided for, 30 per cent. ad valorem."

16

Payment of the duties demanded was made by plaintiff and appeal taken to the Secretary of the Treasury, who affirmed the action of the customs officer here.

The proof shows that the steel-tire blooms in question are produced by first casting a flat, round ingot of steel somewhat in the shape of a cheese or grindstone, with no hole through the centre; it is then reheated and hammered so as to reduce its thickness, thereby compacting its grain or fibre; a hole is swedged through its centre, and it is then hammered on the horn or beak of an anvil, thereby expanding its circumference and forming a grain or fibre in its circumferential direction; and when intended for tires the rudiments of a flange are formed or swedged also upon the outer periphery of the circle. In this form these blooms are ready for rolling, and are imported at this statge of development. On arriving in this country they are reheated and placed in the rolling machine where they are rolled or spun into the size and shape adapting them for use for tires for locomotive driving wheels or car wheels, and, after being rolled, the inner and outer surfaces are turned and finished in a lathe.

17

It seems quite plain to me that when imported these blooms had passed through an important stage in the progress of manufacture into steel tires. They were something more than ingots of steel or plain steel blooms or bars. In the first place the ingots are cast in a peculiar shape, and the work which had been expended on them to bring them from the ingot stage to tire blooms is shown by the proof to have been equal to ten or fifteen dollars per ton, and it was all work for the specific purpose of making them into steel tires, and nothing else.

The particular use to which they are to be applied was indicated from the first by the shape in which these steel ingots were cast. The work done not only fitted them for this specific use, but it unfitted them in a degree for any other use, and hence I conclude that

these steel tire blooms were articles of steel partly manufactured. To use these blooms for any other purpose it would undoubtedly have been necessary to have undone much of the work which had been done upon them. I am, therefore, of opinion that the duty in this case was rightfully charged.

The case of Downing *vs.* Robertson in the southern district of New York, referred to by complainant's attorney on the trial,
18 involved the duties on plain steel blooms, where the ingot had been brought into the shape of planks or slabs by hammering or rolling, and from which railroad bars or bar steel could readily be rolled, and at the stage where they could be and were adapted readily to any other use for which steel was needed. This case, therefore, does not seem to me at all in point for the purpose of settling the questions in these cases.

The issue must be found in this case for the defendant.

Endorsed: Filed Jan'y 31, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the thirty-first day of January, 1884, in the December term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

CHICAGO TYRE AND SPRING WORKS COMPANY
vs.
JESSE SPALDING, Collector of Customs for the Port and District of Chicago.

Assumpsit.

19 This day came the plaintiff and defendant, by their attorneys, and the parties having heretofore filed their stipulation in writing, waiving a jury, and submitting the facts in issue to the court, and the court having heard the evidence and arguments of counsel, and duly considered the same, now finds that the steel-tire blooms, in the declaration mentioned, are produced by first casting a flat round ingot of steel somewhat in the shape of a cheese or grind-stone, with no hole through the center. It is then reheated and hammered so as to reduce its thickness, thereby compacting its grain or fibre; a hole is swedged through its center, and it is then hammered on the horn or beak of an anvil thereby expanding its circumference and forming a grain or fibre in its circumferential direction, and when intended for tires of driving wheels the rudiments of a flange are formed or swedged also upon the outer periphery of the circle. In this form these blooms are ready for rolling and are imported at this stage of development. On arriving in this country they are heated and placed in the rolling machine, where they are rolled or spun into the size and shape adapting them for use for ties for locomotive driving wheels or car wheels, and after being rolled the inner and outer surfaces are turned and finished in a lathe.

The courts finds that when imported these blooms had passed

through an important stage in the process of manufacture
20 into steel tires, and are therefore articles of steel partly manufactured, and were, therefore, properly classified for duties as manufactures of steel not otherwise provided for. The court thereore finds the issues joined for the defendant.

And thereupon the plaintiff, by its attorney, moves the court for a new trial herein, and the court being now fully advised upon said motion overrules the same and awards judgment.

It is thereupon considered and adjudged by the court that the defendant do have and recover of the plaintiff his costs in this behalf expended, amounting to —— dollars and —— cents, and that he have execution therefor.

21 On the same day, to wit, on the 31st day of January, 1884, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court for the Northern District of Illinois. January Term, 1884.

THE CHICAGO TYRE AND SPRING WORKS
vs.
JESSE SPALDING, Collector, &c.

Assumpsit.

It is hereby stipulated and agreed between the parties to the above-entitled cause that on the trial of the same it was proved that the plaintiff imported the steel blooms mentioned in the pleadings and proofs in this case at the port of Chicago during the year 1882, and entered them at the custom house as steel blooms, and that the same were assessed a duty of 45 per cent. ad valorem by the defendant collector as "manufactures of steel not otherwise provided for" under the provisions of schedule E, sec. 2504, Rev. Stat.; that the plaintiff paid the duty levied thereon under protest, and in apt time took an appeal to the Secretary of the Treas-
22 ury, claiming therein that the blooms in question were not dutiable as manufactures of steel not otherwise provided for, and were not specially provided for by name in the tariff, but were dutiable at the rate of 30 per cent. ad valorem as "steel, in any form, not otherwise provided for," under the provisions of schedule E of the same section; that the Secretary of the Treasury decided such appeal affirming the action of the collector, and that this suit was afterwards commenced in due time to recover the fifteen per cent. duty alleged to have been collected in excess, and so paid under protest; that issue was joined, and, a jury having been waived in accordance with the statute, the case was submitted to

the court for trial; that the proof shows that the steel tyre blooms in question are produced by first casting a flat, round ingot of steel somewhat in the shape of a cheese or grindstone, with no hole through the center, It is then reheated and hammered so as to reduce its thickness, thereby compacting its grain or fibre; a hole is swedged through its centre and it is then hammered on the horn or beak of an anvil, thereby expanding its circumference and forming a grain or fibre in its circumferential direction, and, when intended for tyres the rudiments of a flange are formed or swedged also upon the outer periphery of the circle. In this form these blooms are ready for rolling and are imported at this stage of development. On arrival in this country they are reheated
23 and placed in the rolling machine, where they are rolled or spun into the size or shape adapting them for use for tyres for locomotive driving wheels or car wheels, and after being rolled the inner and outer surfaces are turned and finished in a lathe; the work which had been expended on them to bring them from the ingot stage to tyre blooms is shown to have been equal to ten or fifteen dollars per ton; that these blooms are classed in trade and commerce with steel bars, steel ingots, steel billets, steel rail blooms, steel plates, and all sorts of forgings, and are forms of steel known in trade and commerce as steel tyre blooms; that a steel casting which has been hammered ready for rolling is a bloom; that hammering an ingot to prepare it for rolling is called blooming, regardless of the shape into which the steel is made by rolling or hammering; that when imported these blooms were ready for rolling and were imported at this stage of development.

And the court, after hearing all of the evidence, found that when imported these blooms had passed through an important stage in the process of manufacture into steel tyres, and are therefore articles of steel partly manufactured, and were therefore properly classified for duties as manufactures of steel not otherwise provided for.

And the court found the issues for the defendant. That the plaintiff excepted to said finding of the court, viz: That the
24 blooms were properly classified for duties as manufactures of steel not otherwise provided for, as not being in accordance with the evidence, and moved the court to grant a new trial, which motion was overruled and judgment was entered for the defendant.

P. L. SHUMAN,
Attorney for Plaintiff.
RICHARD S. TUTHELL,
U. S. Attorney for Defendant.

Endorsed: Filed Jan'y 31, 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the tenth day of June, 1885, there was filed in said clerk's [office] a bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The Chicago Tyre and Spring Works Company, principal, and John M. Williams, of Evanston, county of Cook and State of Illinois, are held and firmly bound unto Jesse Spalding, collector of customs for the port and district of Chicago, in the full and just sum of five hundred dollars, to be paid to the said Jesse Spalding, collector, &c., his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, ex-
25 ecutors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this tenth day of June, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately, at the December term, 1883, in a suit depending in said court between The Chicago Tyre and Spring Works Company, plaintiff, and Jesse Spalding, collector of customs for the port and district of Chicago, defendant, a judgment was rendered against the said The Chicago Tyre and Spring Works Company, and the said The Chicago Tyre and Spring Works Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Jesse Spalding, collector, &c., citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Chicago Tyre and Spring Works Company shall prosecute the said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else, to remain in full force and virtue.

[SEAL.] CHICAGO TYRE & SPRING WORKS.
CHAS. H. FERRY, *Treas.* [SEAL.]
JOHN M. WILLIAMS. [SEAL.]

Approved:
H. W. BLODGETT.

Endorsed: Filed June 10, 1885. Wm. H. Bradley, clerk.

26 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein The Chicago Tyre and Spring Works Company is the plaintiff and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this sixteenth day of June, 1885.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

27 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between the Chicago and Tyre Spring Works Company, plaintiff in error, and Jesse Spalding, collector of customs for the port and district of Chicago, is defendant in error, a manifest error hath happened, to the great damage of the said The Chicago Tyre and Spring Works Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the ninth day of June, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of Circuit Court U. S. Northern Dist. Illinois, 1885.]

WM. H. BRADLEY,
Clerk of the Cir. Court of the United States for the Northern District of Illinois.

Allowed by—
JUDGE BLODGETT.

[Endorsed:] United States circuit court, nor. district of Illinois. The Chicago Tyre and Spring Works Company, plaintiff in error, *vs.* Jesse Spalding, collector of customs, &c., defendant in error. Copy of this writ deposited in clerk's office U. S. circuit court for northern district of Illinois, June 9, 1885.

28 The United States of America to Jesse Spalding, collector of customs for the port and district of Chicago, Greeting:

You are hereby cited and admonished to be and appaar at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein The Chicago and Tyre Spring Works Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why a judgment rendered against the said plaintiff in error as in the said writ of error mentioned

should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry W. Blodgett, acting circuit judge for the northern dist. of Ill's, this tenth day of June, in the year of our Lord one thousand eight hundred and eighty-five.

H. W. BLODGETT, *Judge.*

Service accepted.

RICHARD S. TUTHELL,
U. S. Att'y No. Dist. of Ill's.

June 10th, 1885.

Endorsed on cover: N. Illinois. C. C. U. S. No. 921. The Chicago Tyre and Spring Works Company, plaintiff in error, *vs.* Jesse Spalding, collector of customs for the port and district of Chicago. Filed 28th August, 1885.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

No. 921.

THE CHICAGO TYRE AND SPRING WORKS CO.,
Plaintiff in Error,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO,
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR THE PLAINTIFF IN ERROR.

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I.

STATEMENT OF THE CASE.

This was an action brought by the Chicago Tyre and Spring Works Company against Jesse Spalding, collector of customs of the port of Chicago, for an alleged illegal exaction of a duty of forty-five per centum ad valorem upon steel tyre blooms imported in 1882. That duty was assessed under the paragraph of Schedule "E," Section 2,504, Revised Statutes of the United States, which reads as follows:

"All manufactures of steel, or of which steel shall be "a component part, not otherwise provided for, 45 per

"centum *ad valorem*. But all articles of steel partially "manufactured, or of which steel shall be a component, "not otherwise provided for, shall pay the same rate of "duty as if wholly manufactured." (Rev. Stats., 2d Ed., 1878, p. 465.)

The Tyre and Spring Works Co. claimed that the duty should have been but thirty per centum *ad valorem*, under the paragraph of Schedule "E," Section 2,504, which reads as follows:

"Steel in any form not otherwise provided for, thirty "per centum *ad valorem*." (Rev. Stats., 2d Ed., 1878, p. 466.)

Upon the ascertainment and liquidation of the duty, the company protested, and appealed to the secretary of the treasury, and within due time after an adverse decision by that officer brought this action.

A jury was duly waived, and the case was submitted to the court for trial.

It was stipulated on the day of the trial (Rec., 21) that the steel tyre blooms in question are produced by first casting a flat, round ingot of steel, somewhat in the shape of a cheese or grindstone, with no hole through the center. It is then reheated and hammered so as to reduce its thickness, thereby compacting its grain or fibre; a hole is swedged through its center and it is then hammered on the horn or beak of an anvil, thereby expanding its circumference and forming a grain or fibre in its circumferential direction, and when intended for tyres the rudiments of a flange are formed or swedged also upon the outer periphery of the circle. In this form these blooms are ready for rolling, and are imported at

this stage of development. On arrival in this country they are reheated and placed in a rolling machine, where they are rolled or spun into the size or shape adapting them for use for tyres for locomotive driving wheels or car wheels, and after being rolled the inner and outer surfaces are turned and finished in a lathe. The work which had been expended on them to bring them from the ingot stage to tyre blooms is shown to have been equal to ten or fifteen dollars per ton; that these blooms are classed in trade and commerce with steel bars, steel ingots, steel billets, steel rail blooms, steel plates, and all sorts of forgings, and are forms of steel known in trade and commerce as steel tyre blooms; that a steel casting which has been hammered ready for rolling is a bloom; that hammering an ingot to prepare it for rolling is called blooming, regardless of the shape into which the steel is made by rolling or hammering; that when imported these blooms were ready for rolling and were imported at this stage of development.

Upon the facts set forth in the stipulation the court rendered a finding that the blooms are articles of steel partly manufactured, and were properly classified for duties as manufactures of steel not otherwise provided for. (Rec., 20.)

The plaintiff excepted to the finding of the court, and then sued out this writ. (Rec., 24.)

II.

Assignment of Errors.

The plaintiff assigns for error the finding of the court:

1. That the agreed statement of facts was such that the court should have found that the blooms in question are known in trade and commerce as forms of steel, there being no evidence that they are partially manufactured articles, in the sense in which that term is applied in the tariff, the work which had been done upon the steel contained in these forms being only such work as is necessary to bring them to the condition of blooms.

2. That as a matter of law the court erred in finding that these blooms were properly classified as manufactures of steel dutiable at 45 per cent. *ad valorem*, for the reason that there is nothing in the agreed statement of facts, tending to show that the blooms in question are classed in trade and commerce as manufactured articles; the agreed statement being that they are classed with steel ingots, steel billets, steel rail blooms, steel bars and steel plates, as forms of steel; and for the additional reason that the court's finding of facts does not warrant such a conclusion.

3. That as forms of steel known in trade and commerce as steel tyre blooms are not otherwise specified by name in the tariff act, the court erred in not finding that the steel blooms in this case are provided for under the clause of Schedule "E," Section 2,504, Revised Statutes, 1874, specifying steel in any form not other-

wise provided for, at a duty of thirty per centum *ad valorem*.

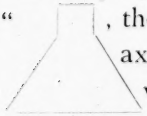
4. That the court erred in finding that as partially manufactured articles they are as manufactures of steel dutiable at 45 per cent. *ad valorem*.

5. That the court erred in not entering a judgment for the plaintiff upon the facts agreed upon between the parties, as set forth in the stipulation.

III.

ARGUMENT.

For the purpose of preparing the mind of the court for the proper application of the law in this case to the facts as they were agreed upon in the trial court, we desire to present in brief the decisions of the treasury department upon appeals which have raised the question of the application of the clause in the tariff for "steel in "any form not otherwise provided for, thirty per centum "*ad valorem*."

1. "Certain peculiarly shaped bars of steel (called "ax-shapes), the end of the bar presenting this shape "  , the same being intended for the manufacture of axes, were held to be dutiable under the provision of section 3, act June 30, 1864, for 'steel in any form not otherwise provided "'for,' at the rate of thirty per cent. *ad valorem*." * * * "The provision of the tariff act for steel in bars applies "only to such bars as are round, square or any other

"*simple form* of uniform dimensions throughout." (Synopsis of Decisions Treasury Department, 1873, No. 1,486, March 25, 1873.)

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2. "It has been represented by importers, that round "steel-wire rods less than one-fourth of an inch in diam- "eter, although imported in coils, is not *steel in coils* of "commerce, which is specified in the third section of the "act of June 30, 1864, and which, they allege, consist "solely of flat or sheet steel of any given width, or gauge, "coiled in the form of a spring, and intended for use on "account of such spring.

"The department is satisfied that such representations "are correct, and such steel-wire rods, therefore, not be- "ing steel in coils, and not being specially enumerated in "the tariff law, will be classified as steel in any form not "otherwise provided for at a duty of thirty per centum "*ad valorem*, under the provisions of the same section "and act." (Syn. of Dec. 1872, No. 1,107, April 27, 1872).

The above decision is cited, approved and followed in Syn. of Dec. 1878, No. 3778, Nov. 14, 1878.

It is again cited, approved and declared to be a "final "conclusion of the discussion," in Syn. of Dec., 1879; No. 4,175, Sept. 4, 1879.

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3. "Flat bands of steel, from about one-half to five- "eighths of an inch wide, some having ribs on the edges and "some having a rib in the middle, and are intended for "use in the manufacture of barbed-wire fences. *They* "*are produced from the ingot, much in the same manner as*

"*steel-wire rods, and appear to be little, if any, further* "*advanced in manufacture than that article.*

"While their primary use appears to be for making "barbed-wire fences, they are, it is understood available "for other purposes. They do not appear to be in any "of the forms of steel specified in the statute, and in the "opinion of the department, are not properly an article "of steel partially manufactured in the sense in which "that term is used in the law.

"The department is therefore of opinion that they are "entitled to entry at the duty of thirty per cent. *ad val-* "*orem*, under the provisions in Schedule 'E' for steel in "forms not otherwise provided for." (Syn. of Dec., 1880, No. 4,488, April 10, 1880.)

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4. "There is nothing in the tariff which indicates that "'steel in any form, not otherwise provided for,' is lim- "ited to steel fit only for melting. Nor is the character "of the importer, nor the question of good faith, on his "part, to use the merchandise otherwise than as steel in "bars, to control its classification." (Syn. of Dec., 1881, No. 4,896, June 14, 1881.)

The decisions of the secretary of the treasury are entitled to consideration as evidence of the construction put upon the tariff laws by the customs authorities, and while not binding upon this court, they will no doubt be treated as valuable aids in disposing of the questions which arise between importers and the government as to the proper rate of duty chargeable upon merchandise.

The above decisions show that it has not been the practice of the customs authorities to limit the application of the clause: "Steel in any form not otherwise pro- "vided for" to imports which are in no technical sense manufactures. Those decisions are presumably in accordance with the spirit of the law, and in consonance with the views of importers and manufacturers who are the advisers of the treasury department as well as the courts upon matters affecting questions in trade and commerce.

When the question of the duty upon steel blooms was presented to the treasury department in 1882, the secretary of the treasury in an exhaustive decision, *in the matter of the appeal of James Lee & Co.*, says:

"It is contended by some that there is no form or "stage of steel at which it is properly known as a 'steel "bloom.' I do not think that this contention can be "maintained. It is true it was not until 1867, or there- "abouts, that the name of 'bloom' was applied to steel; "yet since that time it has come into general commercial "and manufacturing use, and is a phrase as common as "most others in the 'customs' vocabulary, and frequent in "the mouths of business and practical men. The word "'bloom' was, before the year 1867, in practical and legal "use. It was applied to iron as descriptive of it in a certain "stage of manipulation, and is used in the tariff act of "1864. (See Sched. E, Heyl., 989.) As applied to iron "it designated that metal as in a stage less finished than "when in bars, and more advanced than when in pigs. "So that the word 'bloom' is a word of manufactures, "commerce and statutory law, and may be used; and I "must conclude that when it is coupled with the word "'steel,' it is used to carry from mind to mind the notion

"of steel, in some stage of manipulation of it for the "ultimate practical use of mankind. * * *

"I find, too, in the tariff act that provision is made for "'steel, in any form not otherwise provided for.' Now, "the phrase 'in any form' *is not to be restricted to shape and "proportions*, but is to be interpreted as having the mean- "ing of 'any kind or description.' I have shown, I think, "that 'steel blooms' are not the same description of "steel as ingots; and I might, then, inquire whether they "would not fall within the last quoted clause. But as no "one strenuously contends for that, and the decisions of "this department have not gone that way, I will form no "opinion nor intimate any therein." * * *

Synop. Dec., 1882, No. 5,134, February 25, 1882.

The argument of the honorable secretary led him to the conclusion that he could not without reversing former decisions (from doing which he was forbidden by the act of March 3, 1875, sections 1, 2 and 4) hold that steel blooms are dutiable under the clause "steel, in any form "not otherwise provided for," and that he must by force of the circumstances hold them to be a "manufacture of steel," viz: "Something produced from steel that did not "exist in that state and condition of that particular body "of steel." (See page 43 of synopsis cited.)

Thus the matter stood until the question was carried into the courts at New York in the case of *Richard F. Downing, et al.* v. *William H. Robertson, Collector*, which was tried by COXE, J., and a jury, February 6, 1883. In that case it was "strenuously contended" that the steel blooms in question were "forms" of steel, and were not

"manufactures" of steel. We have never seen that case reported in any of the official volumes of reports, but from a stenographic report of the instructions of the court to the jury, contained in a printed report of the trial, which is doubtless within reach of this court, we extract the concluding paragraphs:

"Now, it has been said by the Secretary of the Treas-
"ury (and I think his definition is a correct one), that
"steel in any form is not restricted to shape and propor-
"tion, but it is to be interpreted as having the meaning
"of steel of any kind or description. It is not intended
"by that definition to merely refer to bulk or form, but
"steel of any kind or description also comes under the
"definition of steel in form.

"Now, gentlemen, you have heard the description of
"the manner in which these steel blooms are made,
"and as I have said before, there seems to be very
"little dispute in that regard. They were not known
"prior to 1865; they are a comparatively modern struc-
"ture. The witnesses all substantially agree that the
"crude, raw material from the furnace is poured into a
"mould known as an ingot mould, and that steel first
"makes its appearance as steel in the form of an ingot.
"I think there is no contention that an ingot is a form
"of steel. Now, what next is done? The ingot is put
"back in the furnace, heated to what is called a cherry
"red, and then put upon this blooming mill, or rolling
"mill. And what is the process? It passes between
"these rollers, the crystals are crushed; the fibre is
"elongated and the metal made more dense and more
"perfect. When that is done, it is put under a cutting
"machine and these blooms are cut into various lengths,

"ready to be imported or used for the purposes for "which they are designed.

"Now, gentlemen, the question is, whether that pro- "cess makes these importations manufactures; and "second, if it does not, do they come within the section "of the statute which refers to forms of steel, or steel "in form? If it is simply a change of the raw mate- "rial, put into another shape or form, but if it is crude, "raw steel still, and if you so find by your verdict, then "it would, I think, come within the section of the statute "which provides for a 30 per cent. duty.

"If you find that this process which has been de- "scribed to you, and about which there is little dispute, "constitutes a manufacture of steel, and that these arti- "cles are fairly within that definition of the statute, then "your verdict should be in favor of the defendant.

"If you should find that these are 'forms' of steel and "not 'manufactures' of steel, then your verdict will be "for the plaintiff, and you will assess the damages at "$4,843.82."

The jury returned a verdict for the plaintiffs and we are advised that a writ of error was prosecuted to the Supreme court, by the defendant, collector—and that the case was abandoned by the government, before it was reached for argument.

The facts stated to the jury by the learned circuit judge in that case will be seen, by comparison, to be substantially the same as the facts agreed upon and set forth in the stipulation and the finding of the court in the case at bar, and we contend here that the finding of the learned circuit judge in this case is wholly inconsistent with the clause of the tariff therein referred to by him.

It would seem that but a single glance at the provisions of Schedule "E," in question, would serve to convince one that there is manifest error in the finding.

"They have," says the court, "passed through an im-"portant stage in the process of the manufacture into "steel tyres, and are therefore articles of steel, partly "manufactured." (Trans. of Rec., 10.)

We contend that such a finding is so ambiguous as to have no force as authority for the assessment of any particular rate of duty.

It may be said by counsel for the defendant in error that the finding is one of fact, and cannot be reviewed by this court; but we think a finding of fact must be such a finding as will support a conclusion of law. This finding will not. If the court meant to say that the blooms in question are partly manufactured steel tyres, it will be readily seen that the conclusion of law announced is not supported by such finding, for the reason that locomotive tyres are under the same schedule dutiable at three cents per pound, the law being as follows:

"All articles of steel partially manufactured * * "not otherwise provided for, shall pay the same rate of "duty as if wholly manufactured."

* * * * * * * * * *

"Locomotive tyres or parts thereof, three cents per "pound."

In order that a partially manufactured article should be dutiable at the rate of forty-five per cent., as stated in the conclusion of the court, it is undoubtedly necessary that the article mentioned should be, when wholly

manufactured, dutiable at forty-five per cent., and should be *not otherwise provided for.*

The court does not say in the finding whether the partly manufactured article referred to is or is not "otherwise provided for," which, in view of the succinct provision of the law, it seems he should have done; but it is apparent that such a statement would not have been true.

The agreed state of facts as well as the finding is that the blooms in question are forms of steel, and it nowhere appears that there was any pretense that they were manufactured articles in the sense of the tariff law.

In *Arthur* v. *Jacoby*, 13 Otto, 677, 678, the porcelain upon which the pictures were painted was not such porcelain as is known as "porcelain ware," and it was proved that it "did not in itself constitute an article of "chinaware." "If," says the court, "the jury had found "a verdict in favor of the defendant, the court should "have set it aside as against what is admitted to have "been proved."

Now, it is in our case admitted to have been proved, that the pieces of steel in question were at the time of their importation advanced just one step beyond the ingot stage, by a process of hammering, which prepared them for being rolled or otherwise manufactured into articles for use in this country. At this stage, the evidence is that they are "blooms," the process described being called "blooming," and are known in trade and commerce as forms of steel. It is submitted that a verdict of a jury in favor of the defendant, in the face of such evidence or agreed facts, should have been set

aside, and we think the court's finding should have been set aside on the motion for a new trial, because the record shows that the facts are not as the finding states them. But it is taken for granted that this court will not look back of the finding to ascertain if it be correct as to fact.

The only question, then, which this court will consider, is whether the facts found by the court are sufficient to support the judgment.

Miller v. *Ins. Co.*, 12 Wall., 295.
Tyng v. *Grinnell*, 2 Otto, 469.

The court's finding of fact in this case is at page 19 of the record, and page 9 of the transcript. He repeats the language of the stipulation, and applies to the articles in question the commercial designation "blooms," in speaking of them all through; but concludes, as a matter of fact, that they are partially manufactured locomotive tires.

Locomotive tires, whether of iron or steel, are specially provided for at three cents a pound; but there is no specific provision for partially manufactured locomotive tires. The analogy between steel blooms and iron blooms, in the sense in which the law is construed, is quite apparent. It is admitted by high authority that "blooms" is a word of "manufactures, "commerce and statutory law," and from their very nature and condition, the articles called blooms are partial manufactures of whatever articles are ultimately made from them. Yet "blooms" are entities under the law as much as ingots, bars, billets, or plates, each of which is in one sense a partial manufacture.

It is, therefore, both ambiguous and erroneous, under the law, to find that steel blooms are partially manufactured articles, and dutiable at 45 per cent.

The conclusion is equally erroneous, if it be contended that the finding is, that they are partially manufactured steel tyres.

The section of the statute under which the collector assessed the duties complained of, provides: "All manufactures of steel, or of which steel shall be a component part, not otherwise provided for, forty-five per centum *ad valorem*. But *all articles of steel partially manufactured*, or of which steel shall be a component part, *not otherwise provided* for, shall pay the same rate of duty as if wholly manufactured."

The above provision, it will be seen, is divided into two parts, viz: manufactured and partially manufactured steel not otherwise provided for.

Under the familiar rule for the construction of statutes *in pari materia*, the two clauses must be read together in order to get at the intention of Congress, and it is submitted that the latter portion of the above quoted provision applies only to that class of steel embraced in the former portion, and that it cannot mean steel which, when wholly manufactured is specifically provided for under a different provision of the statute. It seems to us that there can be no other proper construction of the above provision. The latter clause must refer to and mean only such articles of steel as, when completed for use, would be classed as "manufactures of steel, not otherwise provided for." It could not mean, it seems to us, that class of

steel which, when completed, would, beyond all controtroversy, fall under a provision of the statute specially providing for that class of manufactured steel. Then, until it reaches that stage of completion where it will fall under a particular provision of the statute, it must come within that clause under which the plaintiff claimed the steel in question should have been assessed, viz: "steel, in any form, not otherwise provided for, thirty "per centum *ad valorem*."

Effect should be given to the whole of the schedule, in seeking a place for the tire blooms in question. Congress intended the clause for "steel in any form," etc., to have practical application. It first specified certain forms and manufactured articles of steel, and provided specific and *ad valorem* rates of duty, and in some instances both rates. It then provided the *ad valorem* rate only of forty-five per cent. for all manufactured articles of steel which were not enumerated or specified, and for the better protection of the revenue declared that if an imported article, partially manufactured, would in a completely manufactured state, be dutiable at forty-five per cent. *ad valorem*, as being not otherwise provided for, then, although but partially manufactured, it should be dutiable at the same rate. Thus the entire field of steel manufactures and partial manufactures is covered, except those partially manufactured articles which would, if completely manufactured, be specifically provided for by name. That the steel interest might be protected completely, Congress then enacted the clause providing for "steel in any form," etc., and this provision covers all those partial manufactures not otherwise provided for, of articles which, when completed, *are* provided

for specifically. There is no other use for this clause in the tariff act. There is no provision in the statute for a partially manufactured article of steel which is specifically mentioned in its complete state, unless it be the clause named for "steel in any form," etc. That clause means steel in any form, of any description, or in any stage of manufacture, advanced from the unwrought state, or ingot, not otherwise provided for.

If a piece of steel should be imported into this country, wholly manufactured and ready for some special use without any further mechanical treatment, and no other provision was made by statute for its classification, undoubtedly it would be assessed under the provision for "all "manufactures of steel, etc., not otherwise provided for, "45 per cent."; if imported in a partially manufactured state, it would be rightly classified and assessed at the same rate, viz: 45 per cent., because, when wholly manufactured, it would be so classified and assessed. But steel tires for locomotives imported in a manufactured state would not be assessed a duty of 45 per centum, for the reason that the law provides they shall be assessed at three cents per pound; and these "blooms," while they may be considered partially manufactured tires as well, cannot be classified as dutiable at 45 per cent. on the ground that they are partially manufactured, because it is clear the "not otherwise provided for" clause does not embrace them.

The court has found that the "form" of the blooms in question, when imported, was such that they could only be used for making steel tires for locomotives. If imported then in a wholly manufactured state, they would be assessed a duty of three cents a pound; if in a

partially manufactured state, they should be assessed as "steel, in any form, etc., thirty per centum, *ad valorem*," for the reason that the statute does not provide for partially manufactured locomotive or steel tires, and because the provision of the statute under which the defendant assessed the duty complained of, does not contemplate articles of steel which, when wholly manufactured, are provided for in another clause of the statute.

It is to be presumed that Congress had an object in view when it enacted the provision for "steel, in any form, not "otherwise provided for, thirty per centum *ad valorem*." If the finding of the court below is correct, then *all partially manufactured steel* should be assessed at forty-five per cent., and there would be no use for the thirty per cent. clause, for that certainly contemplates steel in a condition advanced from the crude or unwrought state. Unwrought steel is provided for as ingots. As Congress has provided for steel in its unwrought state, it evidently intended and understood that steel "in any "form" was in a partially manufactured state. Now, if that is true, and there is no escape from the conclusion that it is true, then certainly our construction of the forty-five per cent. clause is correct, and the steel in question should have been assessed at thirty per cent.

It cannot be said, as a matter of law, that "partially "manufactured steel" is any different in appearance from "steel in any form," nor that Congress recognized any physical distinction.

We contend that the proper construction of the forty-five per centum provision is to read the two clauses

together, and that they refer to the same manufactures of steel; that in order to a proper decision under this construction, it is necessary to determine in the finding what the manufacture is, or is intended to be, and whether it is, as a manufacture, "not otherwise provided for." To give any effect to the provision for "steel, in any form," etc., the court was bound to make such a finding.

To adopt the language of Justice STORY, in *Adams* v. *Bancroft*, "in this way all the language used has its fit "and due application and meaning, and it is certainly the "duty of the courts of justice to give such an interpre- "tation to every statute as, if possible, will make its pro- "visions consistent with each other." (3 Sumner, 387.)

Then the court could say in effect, "here is an "article of steel in a partially manufactured state, ad- "vanced however to such a stage that its evident ulti- "mate use is apparent. There is no specific pro- "vision in the tariff act for such a manufacture, and "therefore, it should be assessed at forty-five per centum." But the court did not so find in this case, for these blooms are articles of steel in a partially manufactured state (or "steel in form," which is the same thing), advanced to such a stage that their evident ultimate use was for tires for locomotive driving wheels or car wheels. There is a provision in the tariff for locomotive tires or parts thereof, at three cents per pound; therefore this cannot be classified as *a partial manufacture of a manufacture not otherwise provided for*, but must be classified in the only other clause in the tariff act providing for steel advanced beyond the unwrought state, viz: "steel, in any form, not "otherwise provided for, thirty per centum *ad valorem*."

A forcible illustration of this position may be found by a casual investigation of Schedule "E," referred to. We find for instance provisions for:

"Steel railway bars, one and one-quarter cents per pound."

"Anchors or parts thereof, two cents and one-fourth per pound."

"Locomotive tires or parts thereof, three cents per pound."

Rev. Stats., 1878, 2d Ed., 465, 466.

Now under the view of the law adopted by the court below, the determination of the question as to steel railway blooms would be that they are dutiable at 30 per cent. as "steel in any form not otherwise provided for"; while the question as to steel tyre blooms would be that they are partially manufactured tires. The law specifically provides a duty of one and one-quarter cents per pound on steel railway bars. Would not rail blooms be partially manufactured railway bars, as much as tyre blooms are partially manufactured tires? They are both cast in the ingot, and one is hammered, while the other is rolled in a blooming mill. Blooms or pieces of steel hammered a little in the blooming forge to give them the rough outline of an ultimate anchor, would be partially manufactured anchors, and dutiable, under the principle of Judge Blodgett's finding, at [redacted] 45%. A long line of treasury decisions indicates that such a view of the law has never before been entertained. The only question in dispute has been whether or not the steel bloom could or could not be considered a distinctive manufacture not otherwise pro-

vided for, and that question is forever set at rest by the decision in the case of *Downing* v. *Robertson, supra.*

Steel in a form fit for use in the manufacture of any one of the above named articles, and so far advanced from the ingot or unwrought state as to indicate the particular article ultimately intended to be made, has not been held to be dutiable at forty-five per centum, as "a partially manufactured article of steel," and it would be a plain violation of the law to make such a classification.

We have seen that the attempt of the Treasury Department to fix a duty of forty-five per cent. upon "steel "railway blooms," either as "partial manufactures not "otherwise provided for," or as "manufactures not other- "wise provided for," failed in the courts.

Downing v. *Robertson, supra.*

If there exists any doubt as to the proper construction of the revenue laws, the importer is entitled to the benefit of it. These laws are in restraint of man's natural rights, for the public good, and those from whom the taxes are exacted will receive the benefit of all doubtful interpretation. If the construction thus given in favor of the importer be not the proper one, the remedy is with Congress, which meets annually, and the burden is distributed over a wide field, while, on the other hand, if the benefit of the doubt is given to the government, and the construction is erroneous, the burden is imposed upon and borne by a single individual. In support of this position we invite the attention of the court to the following authorities:

Adams v. *Bancroft,* 3 Sum., 386-7.

Powers v. *Barney*, 5 Blatchf., 202.
Hubbard v. *Johnson*, 3 Taunt., 177.
Ross v. *Fuller*, 17 Fed. Rep., 224.
United States v. *Wigglesworth*, 2 Story R., 369.
Potter's Dwarris on Stat. and Const., 190.

The only conclusion of law, and proper judgment, consistent with the finding of fact in this case, is that, as a partial manufacture of an article which is otherwise specifically provided for, the blooms in question should have been classified as "steel in a form not otherwise "provided for, 30 per cent., *ad valorem*."

Respectfully submitted.

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Supreme Court of the United States.

OCTOBER TERM, 1885.

THE CHICAGO TIRE AND SPRINGS WORKS Company, Plaintiff in Error,
vs.
JESSE SPALDING, Collector, &c.
} No. 921.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Brief for the Defendant in Error.

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Brief for the Defendant in Error.

This action is brought to recover an alleged excessive exaction of duty by the defendant in error, the collector of the port and district of Chicago, on certain steel tire blooms imported by the plaintiff in error.

The collector held the merchandise dutiable, as steel partially manufactured, under the follow-

ing provision of Schedule E, section 2504, Rev. Stat. U. S.:

> All manufactures of steel, or of which steel shall be a component part, not otherwise provided for, 45 per centum ad valorem. But all articles of steel partially manufactured, or of which steel shall be a component, not otherwise provided for, shall pay the same rate of duty as if wholly manufactured.

The importer contended that the merchandise was dutiable under another provision of the said section, namely:

> Steel in any form, not otherwise provided for, 30 *per cent. ad valorem.*

The decision of the collector was sustained by the Secretary of the Treasury, and hence this action.

A jury being waived (R., p. 7) the case went to trial, *coram*, Blodgett, J., on the 6th November, 1883 (R., pp. 6, 7), and was held under a *curia* until the 31st January, 1884, when the court made a finding of facts (R., pp. 9, 10), and thereon entered judgment for the defendant (R., p. 10), in accordance with an opinion on that day filed (R., pp. 8, 9).

Argument.

A "bloom," in metallurgy, is so called from the German *blume*, a flower, because it is the flower of the ore, that is, the metal purged of dross.

As applied to steel the term "bloom" means "a steel casting which has been hammered ready for rolling" (*vide* Stipulation R., p. 11).

It is not contended that the term *manufacture*, as employed in the tariff, includes those processes which are necessary to produce pure iron or steel.

It follows then that if the blooms now in question were *ordinary steel blooms*, that is, hammered steel-castings merely, the duty was illegally exacted.

Referring, now, to the finding of the court (p. 9), we see that the blooms in question—

> "are produced by first casting a flat round ingot of steel somewhat in the shape of a cheese or grindstone, with no hole through the center. It is then

> reheated and hammered so as to reduce its thickness, thereby compacting its grain or fiber; a hole is swedged through its center and it is then hammered on the horn or beak of an anvil thereby expanding its circumference and forming a grain or fiber in its circumferential direction, and when intended for tires of driving wheels the rudiments of a flange are formed or swedged also upon the outer periphery of the circle. In this form these blooms are ready for rolling and are imported at this stage of development. On arriving in this country they are heated and placed in the rolling machine, where they are rolled or spun into the size and shape adapting them for use for tires for locomotive driving wheels or car wheels, and after being rolled the inner and outer surfaces are turned and finished in a lathe."

That blooms so produced have passed beyond the mere stage of ordinary steel blooms, which may be used for manufacturing anything into which steel enters, is manifest, because the processes by which the ingot has undergone perforation and hammering on the horn or beak of an anvil have given its grain or fiber a circumferential direction and imparted a new quality to the metal—a quality which fits it specially for the tires of locomotive driving-wheels and car-wheels, and, as the court says in its *opinion*, *unfits it in a degree for any other use* (R., p. 8).

Indeed so distinctive does steel become that has undergone the process mentioned, that a rudimentary *flange* is formed on the periphery of the ingot to signalize an appropriation of the metal to the specific purposes of locomotive driving-wheels and car-wheels. So much so, indeed, that the court says in its *opinion* that—

> "to use these blooms for any other purpose it would undoubtedly have been necessary *to have undone much of the work which had been done upon them*" (p. 9).

It would seem to follow, therefore, necessarily, as stated by the Court, that when imported these blooms had passed through an important stage in the process of manufacture into steel tires and were "*something more than ingots of steel or plain steel blooms or bars.*"

This position of the Court is assailed over and over again in the brief opposite, but, if we are not much at fault, no attempt, beyond unsupported assertion, is there made to show that the blooms in question had not received the distinctiveness which the Court attributes to them as the result of having undergone processes *which are*

not necessary to produce the ordinary steel bloom, and which it cannot be supposed would be employed unless for the production of some additional result. On the contrary, there is not an authority cited in support of this writ of error that does not fully harmonize with our view.

It is evident, therefore, that the blooms in question come under the head of articles of steel partially manufactured, not otherwise provided for, which, according to the law (section 2504 R. S.), are dutiable at forty-five *per centum ad valorem.*

In resistance of this reading of the statute, it is said that the provision in section 2504 touching steel partially manufactured, and not otherwise provided for, refers to such partial manufactures as, if completed, would fall under the preceding provision of the section, as being manufactures of steel not otherwise provided for, and, consequently, that inasmuch as locomotive tires are specially provided for by a levy of three cents a pound, any partial manufacture of them must

be dutiable at thirty *per cent. ad valorem* under the provision for "steel in any form not other wise provided for."

But the plaintiffs' version of section 2504 does not remove this case from its operation, for the blooms in question have not been found by the court to be partially manufactured tires for locomotive driving-wheels alone, but for such driving-wheels *and* ordinary *car-wheels*. Such is the manifest meaning of the finding, as is shown by the opinion of the court, where it is said that when these blooms "are intended for *tires* the rudiments of a flange are formed or swedged also upon the outer periphery of the circle."

Here, then, is a case of *anceps usus*, and as these tire-blooms are as much adapted for ordinary car-wheels as for driving-wheels, it is entirely inadmissible to treat them as partially manufactured driving-wheels; and as there is no special provision in the statute touching tires for car-wheels, such tires, when complete, must come under section 2504 as manufactures of steel not otherwise provided for, and when incomplete

must also fall within that section, according to the interpretation insisted on by the other side to meet the view of the court below, that tire-blooms are steel partially manufactured.

It is stated in the brief opposite (p. 13) that it is "*admitted*" that the pieces of steel in question were, at the time of importation, "*advanced just one step beyond the ingot stage*, by a process of hammering, which prepared them for being rolled or otherwise manufactured *into articles* for use in this country!"

If this rather extraordinary statement, so entirely at war with the whole theory of the defense and the opinion of the court below, is warranted by the omission of the court to state in its finding in so explicit a way as it does state in its opinion (R., pp. 8, 9), that the processes undergone by the steel in question had not only specially fitted it for railway tires but had largely unfitted it for any other use, then we respectfully submit that the whole case has miscarried, and is now here in the same predicament as if the finding were a defective special verdict, and a new

trial must be the consequence, since, in that view, the record does not authorize a judgment on the merits.

On the day the finding and opinion of the court were filed was also filed a stipulation, in the nature of a case agreed, to which the counsel on both sides were parties (R., p. 10).

So far as we can see, the stipulation does not differ substantially from the finding; but if it does, either the latter must govern or the judgment must be tested by a state of facts which was made up after the case was decided, and may not have been wholly known to the court, which neither adopts nor refers to it.

We respectfully submit that the judgment should be affirmed.

WM. A. MAURY,
Assistant Attorney-General.